## CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	<b>✓</b> Force	☑ Discourt.	☐ U.S.
Rebecca Jacobson		Squad #6	201607788	✓ Abuse	O.L.	✓ Injury
Incident Date(s)		Location of Incident:		Precinct:	18 Mo. SOL	EO SOL
Wednesday, 09/07/2016 9:25 PM East 61s 3rd Aver		East 61st Street betwee	1st Street between 2nd Avenue and venue and the 19th Precinct		3/7/2018	3/7/2018
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/Tim	ne Received at CCI	RB
Mon, 09/12/2016 4:37 PM		CCRB	Phone Mo		12/2016 4:37 PM	
Complainant/Victim	Туре	Home Addre	ess	•		
Witness(es)		Home Addre	ess			
Subject Officer(s)	Shield	TaxID	Command			<del></del>
1. DTS Courtney Wallace	07125	898737	081 PCT			
2. POM Joseph Tortora	02059	960032	019 PCT			
Witness Officer(s)	Shield N	o Tax No	Cmd Name			
1. POM Tau Samuel	17558	959192	019 PCT			
2. SPA Magdeling Wallace		329071	PB CAD			
Officer(s)	Allegatio	on		Inv	estigator Recon	nmendation
A.DTS Courtney Wallace	Force: At East 61st Street between 2nd Avenue and 3rd Avenue in Manhattan, Detective Courtney Wallace used physical force against \$87(2)(b)					
B.DTS Courtney Wallace	Force: At East 61st Street between 2nd Avenue and 3rd Avenue in Manhattan, Detective Courtney Wallace struck with a gun.					
C.DTS Courtney Wallace		t East 61st Street between Manhattan, Detective ts 87(2)(b) and				
D.DTS Courtney Wallace	Abuse: A	at East 61st Street betwe n Manhattan, Detective		3rd		

Officer(s)	Allegation	Investigator Recommendation
E.DTS Courtney Wallace	Discourtesy: At East 61st Street between 2nd Avenue and 3rd Avenue in Manhattan, Detective Courtney Wallace spoke discourteously to \$87(2)(b)	
F.DTS Courtney Wallace	Abuse: At East 61st Street between 2nd Avenue and 3rd Avenue in Manhattan, Detective Courtney Wallace refused to provide his shield number to \$87(2)(b) and \$87(2)(b)	
G.DTS Courtney Wallace	Discourtesy: At East 61st Street between 2nd Avenue and 3rd Avenue in Manhattan, Detective Courtney Wallace spoke discourteously to \$87(2)(b)	
H.POM Joseph Tortora	Discourtesy: At the 19th Precinct stationhouse, Police Officer Joseph Tortora spoke discourteously to \$87(2)(b)	

<u>Case Summary</u>
This case exceeded 90 days. There were 10 witnesses who had to be contacted regarding the case and Det. Wallace was on extended medical leave, delaying his interview by approximately three months.

On September 12, 2016, §87(2)(b) filed this complaint with the CCRB via phone.
On September 7, 2016, at approximately 9:25 p.m., at East 61st Street between 2nd Avenue and 3rd Avenue, 887(2)(b) and 887(2)(b) got into a traffic dispute with off duty Detective Courtney Wallace of the 81st Precinct and 887(2)(b)
and Det. Wallace argued on the street and Det. Wallace allegedly hit street and Det. Wallace pointed his gun at street and Det. Wallace pointed his gun at and street and Det. Wallace pointed his gun at and street and Det. Wallace pointed his gun at and street and Det. Wallace pointed his gun at and street and Det. Wallace pointed his gun at and street and Det. Wallace pointed his gun at and street and Det. Wallace to see his badge, which he never showed them (Allegation D and asked Det. Wallace to see his badge, which he never showed them (Allegation F) and street and Det. Wallace to see his badge, which he never showed them (Allegation F) and sked to see Det. Wallace's credentials to which he replied, "I don't have to show you shit." (Allegation G). Det. Wallace then got back into his vehicle and left the scene.
and various witnesses called 911 regarding the incident and officers from the 19 <sup>th</sup> Precinct responded. All of them were brought to the 19 <sup>th</sup> Precinct stationhouse. was eventually arrested. While being handcuffed, he questioned why he was being arrested. The officer handcuffing him, PO Joseph Tortora of the 19 <sup>th</sup> Precinct, allegedly told him, "Shut the fuck up. You should have just done what the Captain wanted you to do." (Allegation H).
This case was originally assigned to Inv. Ariel Courage. It was later reassigned to Inv. Rebecca Jacobson on October 4, 2016.
There was no video footage for this case. The investigation consulted with an attorney in regards to the force allegations.
Mediation, Civil and Criminal Histories  This case was not suitable for mediation due to \$87(2)(b) s arrest.  As of March 31, 2017, lawsuit has not been filed by \$87(2)(b) or \$87(2)(c) (BR 01).
• This is \$87(2)(b) s, \$87(2)(b) s, and \$87(2)(b) s first CCRB complaint (BR 03).

has been a member of the NYPD for 26 years and has had 10 prior allegations against him, involving six cases. In case 200204076, an allegation of vehicle stop was substantiated with a CCRB disposition of Charges, and an NYPD disposition and penalty of Command Discipline – A.
Potential Issues
Five witness 911 calls were placed in regards to this incident. Based on the information provided in their calls, four of the five callers were inside a building when observing the incident. One
caller was on the street when he observed the situation, an individual named \$87(2)(b)
The investigation was unable to contact \$87(2)(b) He would not provide a statement without his attorney, \$87(2)(b) was contacted eight times, by both phone and email,
to schedule a mutually convenient time to interview \$87(2)(b) however \$87(2)(b) would not provide an available time.
Findings and Recommendations
Explanation of Subject Officer Identification
stated that when he was handcuffed, the officer that handcuffed him allegedly told him, "Shut the fuck up. You should have just done what the Captain wanted you to do." could not describe this officer in any way besides being male (BR 04).
stated that the officer that handcuffed \$87(2)(b) was a white male in his 30s, standing 5'8" to 5'11" tall, with a husky or slightly overweight build, brown hair possibly balding on top, and dressed in uniform. While he was being handcuffed, \$87(2)(b) asked why he was being handcuffed and an officer, \$87(2)(b) could not tell which one, yelled out "Shut the fuck up." Although \$87(2)(b) could not tell which officer made this statement, it sounded as though it came from either the officer standing behind the desk or standing behind \$87(2)(b) (BR 05).
PO Tortora is a <sup>§ 87(2)(b)</sup>
and was dressed in uniform on the day of the incident. PO Tortora stated that he was in the
stationhouse, assisting his partners with another arrest, when he observed a male, identified by the investigation as [887(2)(b)] arguing with the Captain in the stationhouse lobby. After some
arguing, the Captain pointed at PO Tortora and told him to arrest \$87(2)(b) PO Tortora
handcuffed \$87(2)(b) PO Tortora denied ever telling \$87(2)(b) to "shut the fuck up" and did not recall hearing any other officer say this. PO Tortora did not recall if any other officers assisted him with handcuffing \$87(2)(b) (BR 07).
Although PO Tortora denied making the alleged statement, he was the officer responsible for handcuffing § 87(2)(b) Additionally, PO Tortora matches the physical description provided

han by \$87(2)(b) and stated that he arrested \$87(2)(b) following a command from the Captain. Given that PO Tortora was the officer who handcuffed \$87(2)(b) matches the matches the physical description provided, and his handcuffing of \$87(2)(5) matches the context of the alleged statement, Allegation H has been pleaded against him.

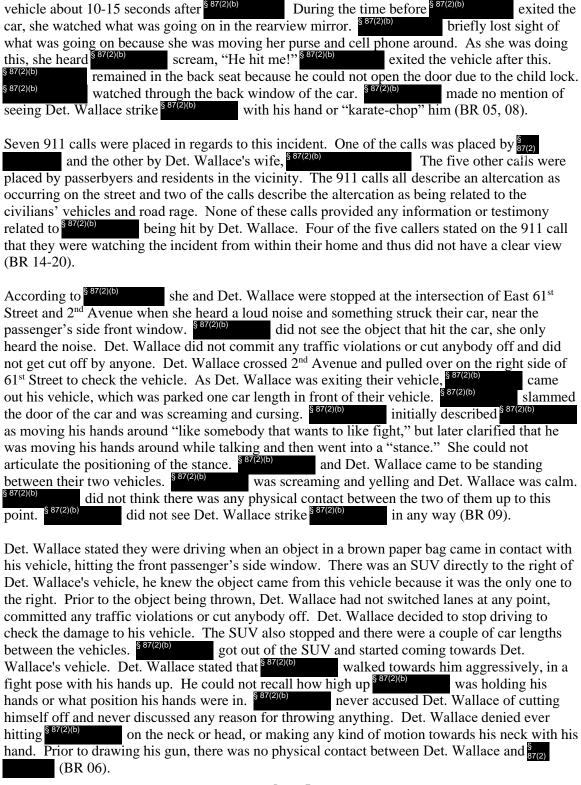
Page 3

CCRB Case # 201607788

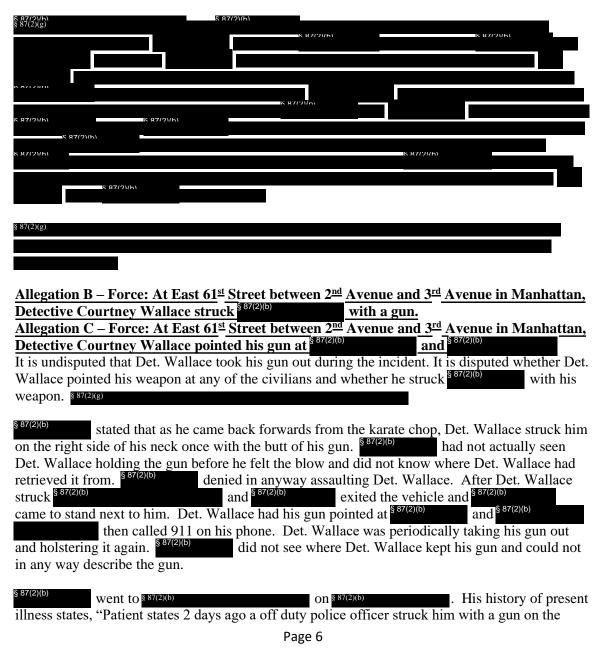
## **Allegations not pleaded**

- Abuse of Authority: Gun drawn: It is undisputed that Det. Wallace drew his gun. However, given that this action was immediately followed by an alleged gun point, the gun drawn allegation has been subsumed within the more egregious allegation of gun point.
- Force: Push: Sa7(2)(b) stated that Det. Wallace pushed causing her to fall to the ground. Sa7(2)(b) never alleged that Det. Wallace pushed her in any fashion. Thus, no force allegation has been pleaded in regards.
- stated that he requested Det. Wallace's name and shield number. Det. Wallace allegedly responded by stating, "I don't have to show you shit." Given that the expletive "shit" was stated in the same context as the refusal name and shield allegation, coupled with the fact that a discourtesy allegation is analyzed under Allegation D, this has been subsumed into the refusal name and shield allegation.

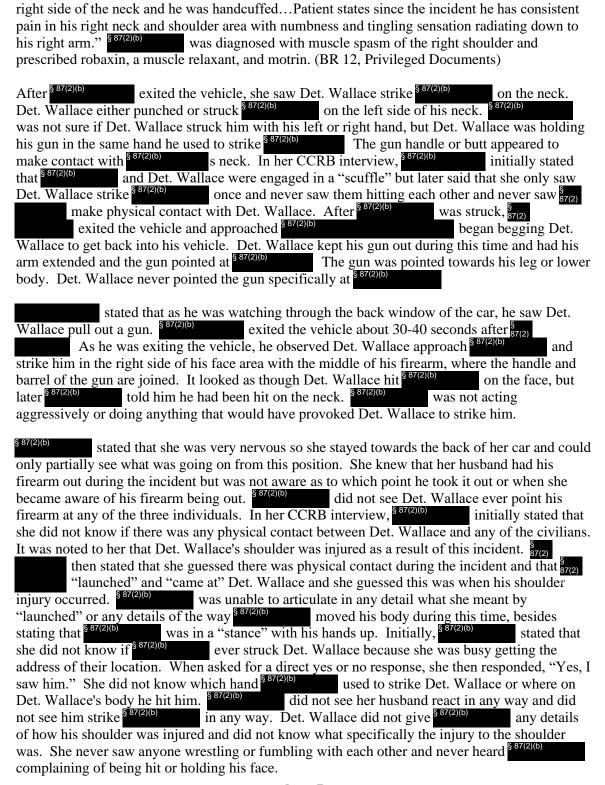
Allegation A – Force: At East 61st Street between 2nd Avenue and 3rd Avenue in Manhattan,
Detective Courtney Wallace used physical force against \$87(2)(b)
stated that he was driving westbound on East 61st Street in the middle lane of the
street. As he was driving, a white SUV driving in the right lane cut street. As he was driving, a white SUV driving in the right lane cut
SUV then moved into the leftmost lane and appeared to be about to make a left turn onto 2 <sup>nd</sup>
Avenue. §87(2)(6) initially stated that he then cut the driver of the SUV off, but later stated
his vehicle remained positioned on the passenger's side of the white SUV for the duration of the
incident. §87(2)(b) and the white SUV both stopped at the intersection of East 61st Street and
2 <sup>nd</sup> Avenue. § 87(2)(b) and driver of the SUV, Det. § 87(2)(b) exchanged a few words. § 37(2)
denied ever throwing anything at Det. Wallace's vehicle. S87(2)(6)
driving west and Det. Wallace followed him. About halfway down the block, §87(2)(b)
pulled over. Det. Wallace immediately pulled over behind \$87(2)(6) and Det.
Wallace exited their vehicles and met between their two vehicles. § 87(2)(b) and § 87(2)
initially remained in the vehicle. §87(2)(b) walked up to Det. Wallace with both
his hands at his side, slightly bent at the elbows with his palms open. Immediately upon
reaching each other, Det. Wallace reached up with one of his arms and karate-chopped \$7(2)
on the throat with his hand (BR 04).
(C.07/0VL)
were consistent that the white SUV cut off their vehicle while
they were driving on East 61st Street and that the SUV followed them on East 61st Street and
when they pulled over, the SUV pulled over behind them. \$87(2)(b) stated that
had cut off the SUV in retaliation, although \$87(2)(b) made no mention of this. \$87(2)
denied that they threw anything at the SUV. They were consistent that Det. Wallace
exited his vehicle first and \$87(2)(b) then exited their vehicle. \$87(2)(b) exited the
Page 4



PO Samuel was one of the 19th Precinct officers who responded to the 911 phone calls and spoke with Det. Wallace upon arriving on the scene. PO Samuel stated that he when spoke with Det. Wallace he explained to PO Samuel that he had cut someone off and that person had then thrown a bottle at his car (BR 10). The complaint report for this incident, 2016-019-05942, was completed by PO Samuel. The narrative begins as follows, "At time/place/occurrence arresting officer was informed by complainant/victim [Det. Wallace] that while driving, he switched lanes too closely to the deft vehicle. Complainant/victim states that this angered the deft causing road rage dispute/incident to ensue." (BR 11)



CCRB Case # 201607788



Det. Wallace stated that walked towards him aggressively, in a fight pose with his
hands up. He could not recall how high up \$87(2)(b) was holding his hands or what position
his hands were in. \$\frac{\$87(2)(5)}{}\$ was standing about two feet away from Det. Wallace. At this
time, Det. Wallace observed savay exit his vehicle, which was about a car length away
from Det. Wallace. When street the vehicle, Det. Wallace saw a bend in street
s right arm, leading him to believe \$87(2)(b) was removing something from the
right side of his body. Det. Wallace did not see where on his body was reaching,
only the bend of the arm. Due to this arm bend, Det. Wallace feared for his life and drew his gun.
Det. Wallace was holding the gun in his right hand and pointed his weapon up. Det. Wallace
described his gun as being "pointed up, towards the air" and motioned with his hand that his gun
was pointed straight forward. Det. Wallace denied that it was ever pointed at either of the males,
but confirmed that it was pointed straight forward. Det. Wallace's DEA representative,
then interjected that the gun was pointed in an upward direction away from \$7(2)\$
Det. Wallace confirmed that he was holding his weapon upward and was doing this
because he feared \$87(2)(b) may have had a weapon. While Det. Wallace was holding his
weapon upward, sar(2)(b) "came up on" on his weapon side.
combative stance, his hands were up and he was yelling, he then came up on Det. Wallace's right
shoulder. Det. Wallace was unable to articulate what he meant by "came up on." He then stated
that \$87(2)(b) hit his shoulder, but did not know what part of \$87(2)(b) s body was used
to hit his shoulder or how he was hit. Det. Wallace stated that as \$87(2)(b) came into
physical contact with his shoulder, he came in close proximity with the gun and the gun went up
and may have hit § 87(2)(b) in the face. During this time, Det. Wallace heard something in his
shoulder pop. Det. Wallace did not intend to hit §87(2)(b) with his weapon.

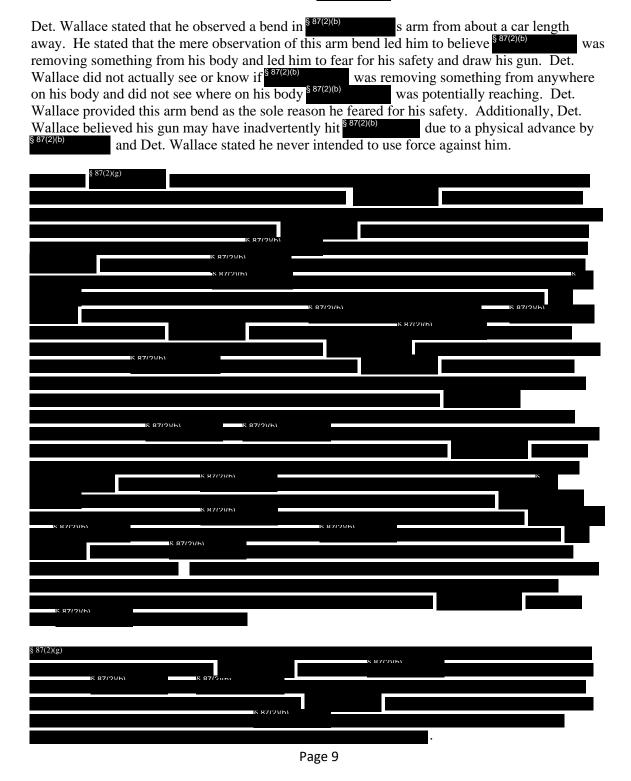
Det. Wallace's shoulder was injured as a result of this incident. About a week after the incident, his shoulder was still bothering him and he sought medical attention. Det. Wallace's rotator cuff was injured; both the muscle and tendon were torn.

Only one of the witnesses saw Det. Wallace with a gun on scene, one of the 911 callers, an individual who identified himself during the 911 call as [87(2)(b)] two males were fighting and one of them then pulled out a gun. He stated that the individual who pulled out the gun was in a white minivan and described the fight between the two males as such: "...one guy punched him and then he pulled out a gun and pointed it at them. Um, he put the gun down and when I left they were still arguing..." (BR 20) §87(2)(b) a security guard at a nearby building, stated that he came out of the back entrance of his place of work and observed three males and one female in an argument. One of the males, was yelling at another male, Det. §87(2)(b) that he had tried to hit him with a gun. §87(2)(b) did not see a gun on scene, but observed § 87(2)(b) holding his neck and stating he had been hit and heard him state to Det. § 87(2)(b) "You tried to gun butt me, but you hit me on the neck." (BR 21)

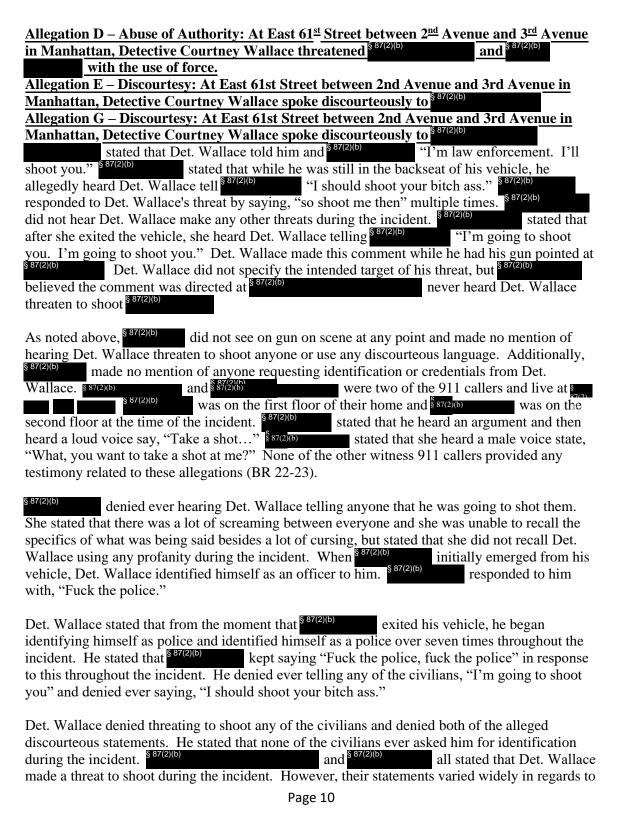
In order to justifiably point his gun, an officer must have an articulable belief of serious physical injury. An officer may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life. In all circumstances, any application or use of

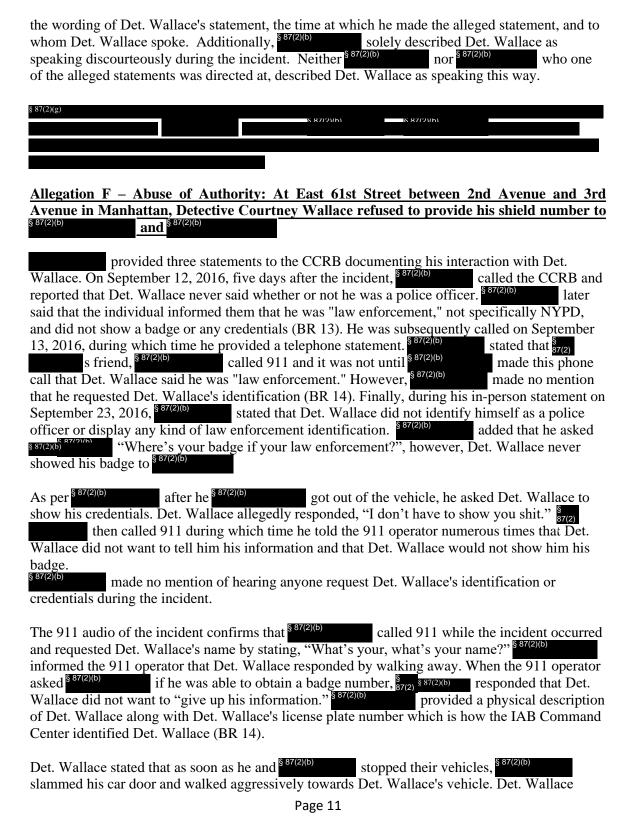
Page 8

force must be reasonable under the circumstances and if the use of force is unreasonable under the circumstances, it will be deemed excessive. Patrol Guide, Section 221-01. (BR 13)

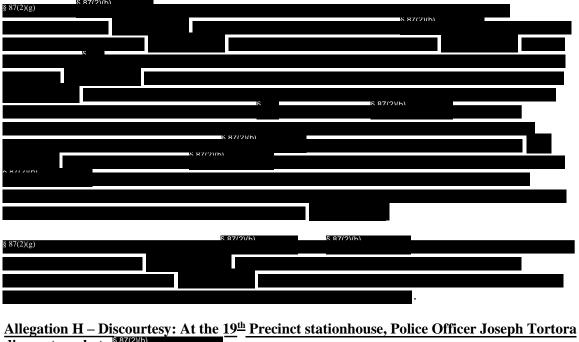


CCRB Case # 201607788





responded by exiting his vehicle and stating, "Sir, it's the police have a seat back in your vehicle." responded several times by stating, "Fuck the police." At this time, (Fuck the police. "At this time, (Fuck the police." At this time, (Fuck the police. "At this time, (Fuck the police." At this time, (Fuck the police. "At this time, (Fuck the police." At this time, (Fuck the police. "Excited the police the constant of the declarant of the thin the did identify himself as the police. "Excited utterances" are the product of the declarant's exposure to a startling or upsetting event that is sufficiently powerful to render the observer's normal reflective processes inoperative. "Present sense impression" declarations, in contrast, are descriptions of events made by a person who is perceiving the event as unfolding. They are deemed reliable not because of the declarant's excited mental state but rather because the contemporaneity of the communications minimizes the opportunity for calculated misstatement as well as the risk of inaccuracy from faulty memory People v. Vasquez, 26 AD2d 176 (1996) (BR 21).



discourteously to § 87(2)(b) After being brought to the stationhouse, \$87(2)(b) and § 87(2)(b) were questioned and then were standing in the stationhouse lobby, by the front desk. There were numerous officers standing around the front desk, none of whom uniformed officer in a white shirt told \$\frac{87(2)(b)}{87(2)(b)}\$ he needed to be que could describe. A he needed to be questioned further and area asked him why, when they had already been questioned. The officer then asked \$7(2) if he wanted to go home. When § 87(2)(6) said he did, the officer stated "Arrest him, and charge him with assault." PO Tortora approached \$87(2)(b) and placed him in handcuffs. PO Tortora then allegedly told § 87(2)(b) "Shut the fuck up. You should have just done what the Captain wanted you to do."

stated that a uniformed officer in a white shirt gave the order for be arrested. PO Tortora then approached stated and handcuffed him.

Page 12

why he was being hand not tell which officer y the front desk or stand officer speak discourte	velled this out, she ling behind § 87(2)(b)		fficer either standing behind no mention of hearing	
Neither Det. Wallace	nor <sup>§ 87(2)(b)</sup> W	ere present when §87(2)(b)	was arrested.	
the Captain. PO Torto pretty close to the Cap restrained. The captain Tortora did not recall in handcuffing him, Serico did not know and was	ora was standing ab tain, who informed in then pointed at Po if any officer assisted asked PO just following orde them and denied th	O Tortora and told him to ed him with handcuffing Tortora what was going overs. PO Tortora stated that hat he ever told	m. sar(2)(b) was get and not calm down he would handcuff sar(2)(b) While and PO Tortora told him	ting ld be PO m he
have come from the of	believe that she was not sur- ficers behind the detimonies, there were	th consistent that an office ed it was the officer who he which officer said the statesk or standing behind settion between settion between	andcuffed him, PO Torto attement and believed it co According to	ora, ould all
§ 87(2)(g)	2)/h)			
		S 87/2)/h)		
Squad:				
Investigator:				
Sign	ature	Print	Date	
Squad Leader:Title	e/Signature	Print	Date	
Reviewer:	e/Signature	Print	Date	